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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
CITY OF BOSTON ) PS Docket No. 07-69  
 )  
and )  
 )  
SPRINT NEXTEL CORPORATION ) Mediation No. TAM-11155  
 )  
Relating to Rebanding Issues in the )  
800 MHz Band )

To: Office of the Secretary  
Attention: Chief Administrative Law Judge

FILED/ACCEPTED  
OCT 15 2007  
Federal Communications Commission  
Office of the Secretary

NEXTEL COMMUNICATIONS, INC.'S  
STATUS REPORT

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits its Status Report in the above-referenced matter. On October 3, Nextel and the City of Boston ("Boston") informed the presiding officer that they had reached agreement on all outstanding disputed issues which were to have been the subjects at hearing in this matter.<sup>1</sup> In an Order released on October 9, the presiding officer instructed the parties to submit Frequency Reconfiguration Agreements (FRAs) representing the parties' agreement for the reconfiguration of Boston's Wave 1, Phase 1 radio systems to the Enforcement Bureau for review and comment, with the FRAs subsequently transmitted to the presiding officer for *in camera* review.<sup>2</sup>

<sup>1</sup> Nextel Communications, Inc. and the City of Boston, Joint Request for Termination of Proceeding, PS Docket No. 07-69 (filed Oct. 3, 2007) ("Joint Request").

<sup>2</sup> *City of Boston and Sprint Nextel Corporation*, Order, PS Docket No. 07-69, FCC 07M-37 (rel. Oct. 9, 2007) ("October 9 Order").

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Following the submission of the parties' Joint Request, Boston's counsel informed Nextel that he was seeking reimbursement from Nextel for an additional \$49,000 in legal fees for his representation of Boston in the mediation before the 800 MHz Transition Administrator that allegedly occurred prior to referral of the Recommended Resolutions to the Commission. Under the terms of the Commission's orders governing 800 MHz reconfiguration, 800 MHz incumbent licensees such as Boston are eligible for the reimbursement of reasonable and prudent expenses of reconfiguration, including legal fees incurred during mediation.<sup>3</sup> However, those orders do not require Nextel to pay post-mediation litigation costs of 800 MHz licensees.<sup>4</sup> The Recommended Resolutions in this matter were referred to the Commission's Public Safety and Homeland Security Bureau for resolution on July 31, 2006 and October 10, 2006, respectively. Thus, the legal fees Boston's counsel now seeks to recover were all allegedly incurred *prior* to

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<sup>3</sup> *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 178 (2004) as amended by *Erratum*, 19 FCC Rcd 19651 (2004) and *Erratum*, 19 FCC Rcd 21818 (2004) ("*800 MHz Report and Order*"), *aff'd sub nom. Mobile Relay Associates et al. v. FCC et al.*, 457 F.3d 1 (D.C. Cir. 2006).

<sup>4</sup> *Improving Public Safety Communications in the 800 MHz Band*, Second Memorandum Opinion and Order, 22 FCC Rcd 10467, ¶ 49 (2007) ("*Second MO&O*"). *See also 800 MHz Report and Order* ¶ 194 (2004) (stating that parties to mediation would share the cost of post-mediation arbitration, warning parties of the potentially substantial costs of post-mediation litigation before the Commission, and recommending that "[p]arties may therefore wish to consider possibly less burdensome and expensive resolution of their disputes through means of alternative dispute resolution."); Wireless Telecommunications Bureau Reminds 800 MHz "Wave One" Channel 1-120 Licensees of Band Reconfiguration and Mediation Obligations, Public Notice, 20 FCC Rcd 20561, 20562 (WTB 2005) ("However, licensees who fail to reach a mediated agreement must bear their own costs associated all [sic] further administrative or judicial appeals of band reconfiguration issues, including *de novo* review by PSCID and appeal of any such review by an ALJ.").

October 10, 2006, but were not identified as a dispute for hearing by either party and the issue was not among the issues designated for hearing in this matter.<sup>5</sup>

Nextel believes that the parties have reached agreement on both the form and substance of all other terms of the FRAs to be submitted in this matter, but the parties have been unable to finalize the FRAs at this time to reflect the resolution of Boston's recently identified legal fees incurred prior to October 10, 2006. Nevertheless, as directed by the October 9 Order, Nextel submits the most recent drafts of the FRAs for review and approval by the Enforcement Bureau. Further, in accordance with the October 9 Order, Nextel is transmitting copies of the draft FRAs to the Enforcement Bureau and the presiding officer, but not including those agreements with publicly available copy of this filing being submitted in the above-captioned docket.<sup>6</sup> For ease of reference, in each of the two FRAs, Nextel is transmitting the page of the agreement that indicates the previous estimate of legal fees, and a duplicate page indicating the revised estimate of legal fees.

Nextel reaffirms that once this last, newly raised, issue is resolved, Nextel is committed to executing the FRA so that Boston, the party that filed the petition for review in this matter, can

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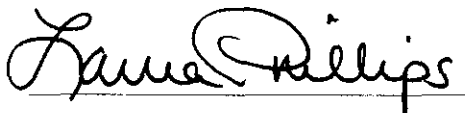
<sup>5</sup> *City of Boston and Sprint Nextel Corporation*, Hearing Designation Order, 22 FCC Rcd 6775 (PSHSB 2007). Nextel notes that while it is not necessarily unusual for the parties to reconfiguration negotiations not to agree on final numbers for legal fees until all other issues have been resolved, the fees in question were fixed and knowable as of October 10, 2006, and yet were never identified by Boston until last week. Nextel is concerned that Boston's counsel is using the deadline imposed by the presiding officer to leverage agreement on an issue that the parties have not had adequate time to negotiate.

<sup>6</sup> October 9 Order at 1 ("IT IS FURTHER ORDERED that by **October 15, 2007**, Boston and Nextel shall reflect their agreement in an FRA to be submitted to the Enforcement Bureau for review and comment, and transmitted to the Presiding Judge for *in camera* inspection.")

move forward with its reconfiguration, clear its frequencies and permit Phase 2 reconfiguration in the region to commence.

Respectfully Submitted,

**NEXTEL COMMUNICATIONS, INC.**

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Its Attorneys

October 15, 2007

## CERTIFICATE OF SERVICE

I, Patrick R. McFadden, herby certify that on this 15<sup>th</sup> Day of October, 2007, a true copy of the foregoing "Nextel Communications, Inc's Status Report" was served via first class, postage paid United States Mail upon the following:

City of Boston  
c/o Robert H. Schwaninger, Jr.  
Schwaninger & Associates, P.C.  
1331 H Street, N.W., Suite 500  
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Gary Schonman, Special Counsel  
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And via facsimile to:

Chief Administrative Law Judge Richard L. Sippel  
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A handwritten signature in black ink, appearing to read "Patrick R. McFadden", is written over a horizontal line.